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23 UNITED STATES DISTRICT COURT

24 NORTHERN DISTRICT OF CALIFORNIA

25 OAKLAND DIVISION

DAVIS WRIGHT TREMAINE LLP

1 LAURA LOOMER,
2 Plaintiff,
3 v.
4 FACEBOOK, INC.,
5 Defendant.

Case No. 4:20-cv-03154-HSG

**JOINT INITIAL CASE MANAGEMENT
STATEMENT**

Date: July 7, 2020

Time: 2:00 pm

Courtroom: Courtroom 2, 4th Floor

Judge: The Honorable Haywood S. Gilliam, Jr.

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1 The parties jointly submit this INITIAL CASE MANAGEMENT STATEMENT &
2 PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of
3 California and Civil Local Rule 16-9:

4 **1. Jurisdiction and Service**

5 The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.
6 The parties are citizens of different states (Plaintiff of Florida and Defendant of California), and
7 the amount in controversy exceeds \$75,000. Facebook does not contest service in this case.
8

9 **2. Facts**

10 Plaintiff's Statement: This case is primarily about alleged defamation, not the couched
11 mischaracterizations set forth below by Defendant Facebook, Inc.

12 Defendant's Statement: Defendant Facebook, Inc. requires users to comply with the
13 Community Standards published on its platform, including the Dangerous Individuals and
14 Organizations (“DIO”) policy. The DIO policy bars from Facebook organizations or individuals
15 involved in “organized hate,” and states that Facebook does not permit “content that praises” or
16 “coordination of support for” any of these “organizations or individuals or any acts committed by
17 them.”

18 Plaintiff Laura Loomer is a self-described “Guerrilla-style” journalist and “conservative
19 Jewish female activist,” who is currently running for Congress in Florida. She frequently makes
20 controversial statements on social media, including, for example: (1) describing herself with the
21 hashtag “#ProudIslamaphobe” after stating “let me be the first to say I never want another Muslim
22 entering this country EVER AGAIN!” and calling Muslims “savages” on Twitter; (2) calling
23 Islam “a cancer on society” on Instagram; and (3) along with her associates, protesting California
24 Governor Gavin Newsom’s immigration policies at the Governor’s Mansion in Sacramento,
25 California while wearing sombreros, serapes, and fake moustaches—and streaming the incident on
26 social media. As a result of these and similar events, Ms. Loomer has been banned from multiple
27

1 technology platforms for violating their Terms of Service, including Twitter, PayPal, Lyft,
 2 GoFundMe, Venmo, Medium, TeeSpring, Periscope, Uber, and Uber Eats. *See, e.g.*, ECF No. 25-
 3 5 at 3-4.

4 On May 2, 2019, Facebook removed Ms. Loomer's accounts from its platforms, along with
 5 the accounts of several other individuals, upon determining that they had violated Facebook's DIO
 6 policy. Facebook's decision to remove these accounts was covered by several media outlets,
 7 including CNN Business, which quoted a Facebook spokesperson describing the removals as
 8 saying: "We've always banned individuals or organizations that promote or engage in violence
 9 and hate, regardless of ideology." Several other news outlets also reported examples provided by
 10 Facebook of some of the reasons for deactivating the accounts of each individual. For Ms.
 11 Loomer, Facebook told news organizations that she had appeared with Gavin McInnes (the leader
 12 of the far-right "Western chauvinist" organization called the "Proud Boys"), and expressed
 13 support for Faith Goldy (a far-right political activist who has espoused theories of "white
 14 genocide")—both of whom were previously banned from Facebook under the DIO policy.
 15

16 On July 8, 2019, Ms. Loomer filed this lawsuit in the U.S. District Court for the Southern
 17 District of Florida, claiming that Facebook defamed her by: (1) designating her as "a dangerous
 18 individual" under the DIO policy; and (2) allegedly implying in the CNN Business article that she
 19 had promoted or engaged in violence and/or hate. Ms. Loomer seeks \$35 million in compensatory
 20 damages and more than \$3 billion in punitive damages.
 21

22 **3. Legal Issues**

23 Plaintiff's Statement: Its constitutes defamation per se, general defamation, and defamation by
 24 implication to publish that a person is a domestic terrorist and dangerous, among other false
 25 factual statements. This is an exceedingly simple and straightforward case. And, contrary to
 26 Defendant Facebook's argument below, defamation is not protected by the First Amendment.
 27

1 Defendant's Statement: As set forth in Facebook's Motion for Summary Judgment (ECF No.
2 54), this case involves the following three legal issues:
3

- 4 • Whether Facebook's statements constitute opinion—which is protected by the First
5 Amendment and non-actionable;
6 • Whether Ms. Loomer can establish that Facebook made these statements with
7 actual malice, as required to sustain a defamation case against a public figure; and
8 • Whether Facebook's decision to remove Ms. Loomer's accounts—which underlies
9 Ms. Loomer's defamation claims—is protected by the First Amendment as well as
10 Section 230 of the Communications Decency Act.

11 **4. Motions**

12 There are two pending motions in this case—Facebook's motion to dismiss under Rule
13 12(b)(6) (ECF No. 25) and Facebook's motion for summary judgment (ECF No. 54). The motion
14 to dismiss is fully briefed. The parties request that the Court set a schedule for the completion of
15 summary judgment briefing, as proposed in Section 17 *infra*.
16

17 **5. Amendments to the Pleadings**

18 Plaintiff's Statement: Plaintiff will be moving to allow discovery, as the prior court foreclosed
19 it. What is learned in discovery if leave is granted, may give rise to a motion to amend the
20 pleadings.
21

22 Defendant's Statement: The deadline to amend the pleadings under the transferor-Court's
23 Scheduling Order (November 1, 2019) long ago elapsed, and the record is now closed. See ECF
24 No. 21 at 1. Accordingly, it would be inappropriate to further amend the pleadings at this stage.
25

26 **6. Evidence Preservation**

27 Plaintiff's Statement: Plaintiff will preserve all relevant evidence.
28

1 Defendant's Statement: Facebook complied with its duty to preserve relevant materials in
 2 accordance with the applicable rules and case law. Discovery is now closed.

3 **7. Disclosures**

4 The parties exchanged initial disclosures on August 29, 2019, in compliance with Federal
 5 Rule of Civil Procedure 26(a)(1).

6 **8. Discovery**

7 Plaintiff's Statement: See above statement about discovery, notwithstanding Defendant
 8 Facebook's misleading recitation below.

9 Defendant's Statement: Discovery has closed and should not be reopened. Under the
 10 transferor-Court's Scheduling Order, the approximate seven-month discovery period closed on
 11 February 24, 2020. Ms. Loomer—who had failed to take any discovery¹—filed a motion to
 12 extend the discovery deadline by 91 days. *See ECF No. 39.* On February 28, 2020, the Court
 13 denied that motion, finding that “Plaintiff has failed to establish good cause for extending the
 14 discovery deadline.” ECF No. 43. Approximately nine hours after the Court denied her request
 15 for an extension of discovery, Ms. Loomer filed a nearly identical complaint against Facebook in
 16 Florida state court. *See Loomer v. Facebook, Inc.*, Case No. 50-2020-CA-002352-XXXX-MB
 17 (Fla. 15th Cir. Ct. 2020) (“*Loomer II*”). Facebook removed *Loomer II* to federal court and marked
 18 it as related to the original case. *See Loomer v. Facebook, Inc.*, No. 9:20-cv-80484-RS (S.D. Fla.
 19 2020), ECF Nos. 1, 4. Ms. Loomer tried to remand *Loomer II* to state court, but then voluntarily
 20 dismissed the case. *See id.*, ECF Nos. 8, 20.

21 Ms. Loomer has already had the benefit of a full seven-month period in which she was free
 22 to conduct discovery. She failed to do so, and the transferor-Court properly found that she showed

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 26 ¹ Ms. Loomer never served any discovery requests during the discovery period. Nor did
 27 she notice any depositions within the required time frame under the Southern District of Florida's
 28 Local Rules.

1 no good cause for her delay. Instead, Ms. Loomer attempted to abuse the judicial process to get a
2 second bite at discovery against Facebook by filing a frivolous duplicative lawsuit in Florida state
3 court, which she later dismissed. Ms. Loomer should not be rewarded for these legal tactics,
4 which have already required Facebook to expend unnecessary resources defending against a
5 frivolous second lawsuit. Additionally, Facebook has already filed a motion for summary
6 judgment based on the closed record. For these reasons, discovery should remain closed.
7

8 **9. Class Actions**

9 This case is not a class action.

10 **10. Related Cases**

11 There are two cases related to this action:

- 12 • *Loomer II (Loomer v. Facebook, Inc., Case No. 50-2020-CA-002352-XXXX-MB*
13 (Fla. 15th Cir. Ct. 2020)), which, as described *supra*, Ms. Loomer voluntarily dismissed after
14 Facebook removed it to federal court. *See Loomer v. Facebook, Inc.*, No. 9:20-cv-80484-RS (S.D.
15 Fla. 2020), ECF No. 20.
16
17 • *Freedom Watch, Inc. v. Google, Inc.*, 368 F. Supp. 3d 30, 34 (D.D.C. 2019): In this
18 case, Ms. Loomer and Freedom Watch sued Facebook, Google, Twitter, and Apple, alleging that
19 they conspired to suppress conservative political views. The District Court dismissed the case and
20 the D.C. Circuit affirmed, holding that the plaintiffs failed to state a colorable legal claim. *See*
21 *Freedom Watch, Inc. v. Google, Inc.*, No. 19-7030 (D.C. Cir. May 27, 2020). This ruling will be
22 subject to an upcoming petition for rehearing en banc.
23

24 **11. Relief Sought**

25 Plaintiff seeks compensatory damages “in excess of \$35,000,000”; punitive damages “in
26 an amount to exceed \$3 billion”; attorney fees and costs; and “any such further relief as the Court
27 deems appropriate including preliminary and permanent injunctive relief.” ECF No. 7 at 10.
28

1 Defendant denies that Ms. Loomer is entitled to any relief and seeks dismissal, fees, and
2 costs.

3 **12. Settlement and ADR**

4 On March 26, 2020, the parties engaged in a court-ordered mediation conference before
5 Mediator Pamela I. Perry. The case did not settle, and Ms. Perry declared an impasse. *See* ECF
6 No. 53. The parties do not believe that additional mediation or ADR would be beneficial at this
7 time. However, if the Court requires the parties to engage in additional ADR, the parties request a
8 settlement conference with a magistrate judge.

9 **13. Consent to Magistrate**

10 Facebook declined magistrate judge jurisdiction for all purposes on May 19, 2020 (ECF
11 No. 63), and this case was assigned to this Court.

12 **14. Other References**

13 None.

14 **15. Narrowing of Issues**

15 Plaintiff's Statement: A review of the pleadings will demonstrate that this case is clear and
16 simple and does not require narrowing of the issues. The suit is not without basis as Defendant
17 Facebook arrogantly claims.

18 Defendant's Statement: This lawsuit is without any basis, and should be dismissed in its
19 entirety, based on the motions already pending before this Court (ECF Nos. 25, 54).

20 **16. Expedited Schedule**

21 The parties agree that this case cannot be handled under the Expedited Trial Procedure of
22 General Order 64, Attachment A.

23 **17. Scheduling**

24 Because discovery has closed, the parties propose the following dates for completion of
25 summary judgment briefing, hearing of dispositive motions, pretrial conference, and trial:

Event	Proposed Deadline
Plaintiff's response to Defendant's motion for summary judgment due	August 4, 2020
Defendant's reply in further support of its motion for summary judgment due	August 25, 2020
Deadline for Hearing of Dispositive Motions	September 24, 2020
Pre-Trial Conference	November 20, 2020
Trial	December 7, 2020

18. Trial

Plaintiff has demanded a jury trial. *See* ECF No. 7 at 10. Plaintiff estimates that the trial will take 3-5 days. Defendant contends that this case is inappropriate for trial because there are no disputed issues of fact, and so the case should be disposed of through its pending summary judgment motion.

19. Disclosure of Non-Party Interested Entities or Persons

Plaintiff's Statement: Not applicable.

Defendant's Statement: Facebook has filed its Certification of Interested Entities or Persons per Civil Local Rule 3-15 (ECF No. 62) and restates the following: Other than the named parties in this action, there are no other persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities that have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) any other kind of interest that could be substantially affected by the outcome of this proceeding.

20. Professional Conduct

Both parties' counsel have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Such Other Matters As May Facilitate Just, Speedy and Inexpensive Resolution

1 None.
2

3 Dated: June 30, 2020

Respectfully submitted,

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